IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2589 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULAM RASULKHAN KASAMKHAN BELIM - Petitioner(s)
Versus
MAMLATDAR - MANGROL - Respondent(s)

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Appearance :
MR HD VASAVADA for Petitioner(s) : 1,
MS. ARCHANA RAVAL, AGP for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.H.SHUKLA

Date : 17/12/2007

ORAL JUDGMENT

1. The present petition was originally filed and numbered as Appeal from Order No. 218 of 2000. However, as per the order passed by brother Justice K.S.Jhaveri,J dated 22.2.2005, it was converted into a Special Civil Application / Writ Petition, and therefore, it has been numbered as such.

2. The present petition has been filed by the petitioner who was a Surpanch of the Nandarkhi Gram Panchayat, challenging the order passed by the Mamlatdar, Mangrol in Revenue Panchayat Case No. 2 of 1993 dated 13.6.1994 and also Civil Misc. Application No. 179 of 1998 passed by the Second Joint District Judge, Junagadh dated 13.3.2000 on the grounds inter alia that both the authorities have erred in dealing with the present Appellant in holding that the appellant had misappropriated the funds to the tune of Rs.38,000/-.

3. The facts of the case briefly summarised are that the appellant was the Surpanch of Nandarkhi Gram Panchayat and during his tenure of office as Surpanch of Nandarkhi Gram Panchayat it was alleged that he has acted illegally and mismanaged the funds of Panchayat and also misappropriated the funds. Therefore, the complaints / applications were made, pursuant to which, the Mamlatdar, under the provisions of Gujarat Panchayat Act, initiated aforesaid case being Panchayat Case No. 2 of 1993 and a show cause notice dated 30.11.1993 was issued to him. The main allegation was that, in constructing the surrounding wall to the Id Masjid, illegal gratification was obtained and / or he has misappropriated the amount. The witnesses were examined and thereafter the Mamlatdar in aforesaid Panchayat Case No. 2 of 1993, vide order dated 13.6.1994 decided against the

petitioner holding that he has been guilty for the misappropriation and the irregularities, directing to deposit the amount with the Panchayat failing which it was also directed the same to be recovered as arrears of revenue. It is against that the petitioner sought to prefer Misc. Civil Application No. 126 of 1995 which was dismissed for default. Thereafter another Misc. Civil Application No. 167 of 1997 was filed for restoration with a condonation of delay and the same was granted by the learned Joint District Judge, Junagadh vide order dated 8.12.1998. Thereafter another Misc. Civil Application No. 179 of 1998 was filed for restoration of the Misc. Civil Application No. 126 of 1995 and as per the order dated 13.3.2000 passed by the learned Second Joint District Judge, Junagadh, after issuing a notice to the Opponent, came to be dismissed.

4. The present petition has been therefore filed challenging both these orders on the ground inter alia that both the authorities have gravely erred in not appreciating the facts that application alleging misappropriation of the funds were purely of a political nature and therefore Mamlatdar has not given the correct finding while deciding Panchayat Case No. 2 of 1993 vide order dated 13.6.1994. Further it is also contended that the witnesses were examined and cross-examined and therefore it has been contended that the bills are found to be genuine

and therefore there is no question of any misappropriation and therefore, the present petition.

5. Heard the learned advocate Mr. H.D.Vasavada. He tried to submit that by passing the order both the authorities failed to appreciate the fact that such a complaint could be of a political nature and the allegation could be made but it has not been substantiated. Further Mr. Vasavada also submitted that hearing has not been given and therefore rules of natural justice have been violated.

6. Though this submission has been made as it transpires from the record itself that show cause notice was issued by the Mamlatdar and thereafter the evidence was lead. The facts as narrated above are referring to the allegation that while constructing the wall of the Id Masjid, the amount of Rs.38,000/- was misappropriated inasmuch as the work has been done by the people of the village themselves and yet it is shown to have been done through contractor and the contract appears to have been given the name of the brother of the petitioner herein. The learned advocate has not brought on record or call for original records but it has not been disputed that the evidence was lead, opportunity of cross-examination was given and thereafter the order was passed by the Mamlatdar in Panchayat Case No. 2 of 1993 dated 13.6.1994. Thereafter, as per the provisions of the Gujarat

Panchayat Act, necessary appeal or application could have been filed but the petitioner herein filed Misc. Civil Application No. 126 of 1995 and the same was dismissed for default. Thereafter, again even in application for restoration, there was a delay and therefore the delay was condoned pursuant to the order passed in Misc. Civil Application No. 167 of 1997 vide order dated 8.12.1998 by the learned Joint District Judge, Junagadh. Thus delay was condoned even in filing the restoration application and ultimately the said application / appeal being Misc. Civil Application No. 126 of 1995 was filed. It transpires that thereafter again application being Misc. Civil Application No. 179 of 1998 was filed and after issuing notice to the other side, learned Second Joint District Judge, Junagadh dismissed with cost vide order dated 13.3.2000. Therefore, his submission that opportunity of hearing has not been given or rules of natural justice have been violated, is misconceived inasmuch as even in filing the application for restoration, there was a delay, which has been condoned. Admittedly the notice has been issued to the other side and and Mamlatdar while deciding Panchayat Case No. 2 of 1993 had lead the evidence, therefore the material could have been brought to the notice of the learned Joint District Judge but the petitioner herein has failed to make out any

case inasmuch as the order has been passed by the learned Joint District Judge dated 13.3.2000, which clearly refers to the fact that the order is passed after hearing the petitioner and as he has failed to substantiate the reason, the application was dismissed with cost. The petitioner has challenged by way of petition under Article 227 of the Constitution of India, the legality and propriety of the order passed by the Mamlatdar as well as by the learned Joint District Judge, Junagadh, the details are not brought on record, and as it transpires, the petitioner himself has not been vigilant and inspite of that his application for condonation or restoration has been granted. It is well settled that the scope of interference under Article 227 of the Constitution is limited and the finding of facts are not required to be re-appreciated. Further, the petitioner has not pointed out from any material from the record of this petition about how the findings are illegal inasmuch as there is nothing from where it can be pointed out that the conclusions arrived at by both the authorities are illegal. Therefore, without going much into the details, the submissions made by the learned advocate Mr. Vasavada cannot be accepted and the present petition is hereby deserves to be dismissed. Accordingly the present petition is hereby stands dismissed. Rule discharged. No order as to costs.

(R.H.Shukla,J)

Jayanti*